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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/22/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/757,362

Applicant(s)

CHASTEEN ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 31 July 2003 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10. 6) ☐ Other:

Art Unit: 3727

DETAILED ACTION

Drawings

1. The drawings were received on July 31, 2003. These drawings are not approved since the location of reference character **34** and its associated lead line are not located in the same generally area of the can end as seen in the originally filed drawings.
2. In order to avoid abandonment, the drawing informalities noted in Paper No. 9, mailed on February 28, 2003, must now be corrected. Correction can only be effected in the manner set forth in the above noted paper.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "the score line having a surface area no greater than about 0.1503 inches" in claim 14.
4. The amendment filed July 31, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "and more preferably no great than about 0.1503 inches as defined by the rupturable score line 16". Moreover, claim 14 indicates the dimension corresponds to a surface area, not a diameter.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

5. Claims 4,14,15, and 23 are objected to because of the following informalities: the area must be expressed in terms of square inches. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. Claims 1 and 3-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification at page 7, lines 14-18 specifically state the small opening must have a "diameter of between about 0.1865 to 0.3125 inches"

Art Unit: 3727

in order to be substantially spill proof. Yet, claims 1 and 20 indicate a larger diameter opening with a straw therein is substantially spill proof and claim 14 indicates a surface area less than 0.1503 inches allows for a straw. A contradiction between claims 1 and 20 and the specification exists and between claim 14 and the specification.

7. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure as originally filed does not set forth the pull ring as being elevated, but rather a lip of the pull ring is elevated from the upper surface of the central panel. This is a new matter rejection.

8. Claims 1,3-13 and 20-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The dimension of 0.4375 inches falls outside of the expressed range of the small opening at page 7, lines 14-18. This dimension, according to the specification, does not provide a substantially spill proof can lid.

It is unclear how a dimension of 0.4375 inches provides a substantially spill proof container end when the specification states that a diameter greater than about 0.3125 would not allow the lid to be spill proof.

Claim 1 recites the limitation "said small opening beverage can" twice in the last three lines thereof. There is insufficient antecedent basis for this limitation in the claim.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 3727

10. Claims 1,4,6-12,14,15,18,20,21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tashiro et al. (JP 2000-226029) in view of Matsumoto (JP 9-315461) and Hosoi et al. (JP 2002-53159).

Tashiro teaches a can end having a small opening for receiving a straw, the small opening having a maximum length of 10mm and allowing venting of the can while the straw is therein. Tashiro does not teach the small opening is substantially circular nor specific dimensions of the other can end portions.

Matsumoto teaches it is known to provide a can end with a substantially circular opening for receiving a straw therein and capable of frictionally engaging the straw.

Hosoi teaches it is known to provide a can end with a substantially circular opening for receiving a straw therein and a small vent opening adjacent the circular opening and defined by the score line (see the embodiment of figure 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the small opening of Tashiro of a circular configuration, since such a modification would have involved a mere change in the shape of a component. Doing so provides a shape which is easier to manufacture.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a vent opening adjacent the circular opening of Tashiro. Doing so provides for venting of an associated beverage can to aid in removal of liquid contents from the beverage can.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the small opening with a diameter no greater than about 0.4375 inches, the venting opening of at least 0.0004 (square) inches, to elevate the pull ring at least about 0.030 inches from the upper surface, and a score line surface area no greater and about 0.1503 (square) inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

11. Claims 3,5, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hanson (US 4,184,605)

Tashiro as modified teaches the claimed can end except for a bead inhibiting detachment of a tab from the can end.

Art Unit: 3727

Hanson teaches it is known to provide a bead proximate the hinge and/or termination point of the score line to inhibit detachment of a tab from the can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of provide a bead proximate the hinge and/or termination point of the score line. Doing so inhibits detachment of a tab from the can end upon opening.

12. Claims 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 14 above, and further in view of Forbes (US 4,923,083).

Tashiro as modified teaches the claimed can end except for a reinforcing bead providing a shroud the leading edge of the circular opening.

Forbes teaches it is known to provide a reinforcing bead providing a shroud the leading edge of a circular opening of a scored can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a shroud to the modified can end of Tashiro. Doing so prevents accidental cuts caused by an exposed open score line.

13. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 20, and further in view of Peterson et al. (US 3,438,578).

Tashiro as modified teaches the claimed can end except for the straw having a corrugated portion.

Peterson teaches it is known to use a corrugated straw for drinking a beverage.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a corrugated straw, since it is an obvious substitution of known equivalents which allow for beverage to be removed from a container without touching the can end. Doing so allows one to drink from an associated beverage can while lying down.

14. Claims 17 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 14 and 20 above, and further in view of Brown (US 3,757,989).

Conclusion

15. This office action is made non-final.

Art Unit: 3727

16. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

17. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely.

A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-____ on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____


18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
October 17, 2003


Robin A. Hylton
Primary Examiner
GAU 3727